

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3178 of 1995

GSRTC

Versus

POLA RAJA BHUTIYA

Appearance:

MR YS LAKHANI for appellant

MS SEJAL K MANDAVIA for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL

Date of Order: 01/10/96

ORAL ORDER

1. At the request of learned counsel appearing for the parties, the appeal is taken up for hearing today.

2. By means of filing this appeal under section 173 of the Motor Vehicles Act, 1988, the appellant has questioned legality of judgement and award dated November 30, 1994 rendered by Motor Accident Claims Tribunal (Special) - at Porbandar in Claim Case No.38/93.

3. In brief, the facts are that, on November 16, 1992, at about 17.30 hrs, the respondent No.1 was proceeding on his Hero majestic motor cycle bearing No. GCJ 4985 from Kamlabagh to Old Fountain Road in Porbandar city. According to him, he was driving the motorcycle on the left side of the road, but at that time, a bus owned by the Gujarat State Road Transport Corporation dashed with the motorcycle from behind, as a result of which, he fell down and sustained injuries on right hand elbow. He was removed to Government hospital, at Porbandar where he had filed complaint. Initially, he remained in the hospital as an indoor patient for 2 days, but again, he was admitted as an indoor patient and his hand was required to be operated upon. After operation, he had to stay in the hospital as an indoor patient for 15 days. It is his case that the accident occurred due to the rash

and negligent driving of the bus which was being driven by original opponent No.1. Under the circumstances, the respondent No.1 instituted claim case No.38/93 before the Motor Accident Claims Tribunal (Special), at Porbandar and claimed compensation of Rs 85,000/- with interest at the rate of 12% p.a. and costs.

3. On summons being served, the S.T. Corporation contested the claim case by filing written statement at exh.18, but driver of the bus did not file any written statement. In the written statement, the corporation pleaded that the bus in question never dashed with hind portion of the motorcycle which was being driven by the original applicant and therefore, the original applicant was not entitled to claim compensation at all. In the alternative, it was averred that the accident did not take place because of the rash and negligent driving of the bus by the driver and therefore, the claim petition deserved to be dismissed.

4. The Tribunal framed necessary issues for determination at exh.19. In order to prove his case, the original applicant examined himself at exh.24. He also produced necessary documents in support of his claim advanced in the petition for claiming the compensation. On behalf of the corporation, the driver was examined. On appreciation of the evidence led by the parties, the Tribunal held that, in the accident in question, the bus No. GJ 1 Z 1987 owned by the Gujarat State Road Transport Corporation was involved and the accident took place because of the rash and negligent driving of the bus by the original opponent No.1. The Tribunal took into consideration the certificates issued by Dr Kishor Mohanlal Sayani, who was then serving as Orthopaedic Surgeon at Bhavsinghji Hospital, at Porbandar as well as disability certificate issued by Dr N.R.Popat and concluded that the claimant had suffered 20% disability of the whole body. Though it was claimed by the claimants that he was drawing salary of Rs 3,000/- per month, the Tribunal took average pay of the applicant to be Rs 2,500/- per month and assessed the compensation on that basis. According to the Tribunal, the claimant was entitled to get compensation of Rs 90,000/- as future loss of income and Rs 10,000/- for pain, shock and sufferings. Though it was claimed by the claimant that he was bedridden for four months and could not attend his duties, the Tribunal concluded that because of the injuries sustained by him, the claimant was prevented from attending duties for a period of three months and therefore, the Tribunal awarded Rs 7,500/- by way of actual loss of income. The Tribunal also awarded

Rs.10,000/- towards the expenses incurred by the claimant for treatment, nutritious food etc and Rs 1,000/- as attendants' charges. In that view of the matter, the Tribunal concluded that the original claimant was entitled to recover Rs.1,15,000/- by way of compensation. However, as the claim was confined to Rs 85,000/- only, the Tribunal awarded the compensation of Rs 85,000/- with 12% p.a. interest by its judgement and award dated November 30, 1994, giving rise to the present appeal.

5. Mr Y.S.Lakhani, learned counsel appearing for the appellant has taken me through the entire evidence on record. It was pleaded that, in the First Information Report lodged by the original claimant, it was not mentioned that the bus bearing No.GJ I Z 1987 was involved in this accident and therefore, the finding that the bus owned by the Gujarat State Road Transport Corporation was involved in the accident, is erroneous and should be set aside. It was contended that the panchnama of place of occurrence exh.29 does not show that any damage was caused to the motorcycle no.GCJ 4985, which was being driven by the original claimant, which indicates that the original claimant had fallen down from the motor cycle on his own, but had not sustained injuries because of the accident in question and therefore, the appeal deserves to be accepted. It was emphasized by the learned counsel for the appellant that the testimony of Dr N.R.Popat should not have been relied on by the Tribunal while assessing the permanent disability suffered by the claimant and therefore, the award deserved to be set aside. It was stressed that the claimant was aged about 40 years at the time when the accident took place and therefore, the Tribunal committed material error in applying multiplier of 15 years to the facts of the present case and therefore, the appeal should be allowed.

6. Miss S.K.Mandavia, learned counsel appearing for the respondent No.1 submitted that the fact that the bus in question was involved in the accident is evident from the deposition of the driver and therefore, the finding recorded by the Tribunal to the effect that the bus in question was involved in the accident, being just and proper, should be upheld. On behalf of the original claimant, it was emphasized that the disability suffered by the claimant is proved from the evidence of Dr Popat and in absence of good ground, the finding of fact recorded by the Tribunal should not be interfered with by this Court. It was argued that, in view of salary slips produced by the claimant at exhs. 25, 26 and 27, the Tribunal should have accepted the case pleaded by the

claimants that he was drawing Rs.3,000/- per month by way of salary and compensation should have been awarded to the claimant on that basis. What was emphasized on behalf of the claimant was that, in fact, the Tribunal has applied multipliers of 10 years to the facts of the present case and having regard to the extent of disability suffered by the claimant and the amount of compensation, the appeal filed by the Gujarat State Road Transport Corporation should be dismissed.

7. In order to establish that the respondent No.2 was driving the S.T. bus bearing No. GJ 1 Z 1987 rashly and negligently, the claimant has examined himself at exh.24. In his deposition, the claimant has categorically stated that the accident had taken place on November 16, 1992 at about 05.00 p.m. when he was proceeding on his motorcycle from Kamlabagh to Old Fountain Road, in Porbandar city and the bus being driven by the respondent No.2, had dashed with his motorcycle from behind, as a result of which, he had fallen down and sustained injuries. The fact that, in the FIR lodged by the original claimant, there is no reference to the effect that the bus bearing No.GJ 1 Z 1987 was involved in the accident, is taken into consideration by the Tribunal. The Tribunal has also taken into consideration the contents of the panchnama of the place of occurrence, which was produced at exh.29. However, the Tribunal has referred to and relied on the deposition of the driver wherein the driver has admitted that a criminal complaint was filed in respect of the accident against him and that his police statement was also recorded by the Investigating Officer. From the deposition of the driver, it is evident that he admitted that, in the accident in question, the bus driven by him was involved. The driver has also admitted that he had informed the Porbandar Depot about the accident and the Porbandar Depot, in turn, had informed about the same to Bhuj Depot. If the bus had not been involved in the accident, the driver would not have been prosecuted nor necessary intimation about the accident would have been sent to Bhuj Depot by Porbandar Depot. On the facts and in the circumstances of the case, the finding recorded by the Tribunal that the bus was involved in the accident, cannot be said to be erroneous at all. The said finding is based on correct appreciation of the evidence led by the parties and is, therefore, hereby upheld. The evidence of the claimant clearly establishes that he was driving his motor cycle on left side of the road and the bus dashed with his motor cycle from behind, as a result of which, he fell down and sustained injuries. In view

of the evidence of the claimant and driver of the bus, there is no manner of doubt that accident took place because of rash and negligent driving of the bus by its driver.

8. The submission that the claimant has failed to prove permanent partial disability of the whole body to the extent of 20% and therefore, the appeal deserves to be allowed, has no substance. The claimant has examined Dr Kishor Mohanlal at exh.30 to substantiate his claim. The Doctor has stated in his testimony that, on November 16, 1992, at about 06.00 p.m., the claimant was admitted in hospital and he had noticed two injuries on him which are mentioned in the certificate exh.32. The Doctor has deposed that the right elbow of the applicant was swollen and there was disfiguration. It is clarified by the witness that though the claimant was discharged on November 17, 1992, he was again readmitted and operation was performed on him. The Doctor has produced the case papers at exh.31, wherein the details of injuries and the treatment given to the applicant are elaborately mentioned. The certificates exhs. 33, 34 and 35 produced by Dr Kishor Mohanlal Sayani establish that the claimant had sustained permanent disablement and dislocation of right elbow, for which operation was performed on him and he was advised to take complete bed rest for a long time. Dr N.R.Popat, in his deposition recorded at exh.37, has stated that he had examined the claimant and found that there was permanent partial disability to the extent of 40%. Though Dr Popat has been searchingly cross examined, nothing has been brought to discredit his version that the permanent partial disability suffered by the claimant was to the extent of 40%. The Tribunal had advantage of observing demeanour of the witness and has relied on the deposition of Dr N.R.Popat. Having regard to the facts and circumstances of the case, I am of the view that, no error is committed by the Tribunal in coming to the conclusion that the claimant has proved that permanent partial disability suffered by him was to the extent of 40% and it was 20% of body as a whole.

9. Though the claimant had produced exhs. 25, 26 and 27 to establish the fact that his salary was Rs.3,000/- per month, the Tribunal has rightly come to the conclusion that the average salary of the claimant was Rs.25,000/- per month. Having regard to the disability sustained by the claimant, the Tribunal has worked out loss of income at Rs. 500/- per month. On overall assessment of the evidence, the Tribunal has concluded that the claimant would be entitled to receive

Rs.1,15,000/- as compensation, including Rs.90,000/- by way of future loss of income. It is true that while working out future loss of income, the Tribunal has adopted multiplier of 15. However, as is evident from operative order of the Tribunal, total amount awarded to the claimant as compensation is Rs.85,000/- and not Rs.1,15,000/-. If the amount awarded under different heads like (a) pain, shock and suffering (b) medical expenses (c) actual loss of income etc is deducted from Rs.85,000/-, the amount awarded to the claimant under the head of future loss of income, comes to Rs.57,000/-. Under the circumstances, it will not be correct to say that the Tribunal has applied multiplier of 15 years, because in fact, the Tribunal has applied multiplier of less than ten which is quite evident from the amount awarded under the head of future loss of income. The Tribunal has awarded Rs.57,500/- towards future loss of income, which would indicate that multiplier of less than 10 years is adopted by the Tribunal to the facts of the present case. The claimant has proved that he was confined to bed for three months. As his income is assessed at Rs.2500/- per month, the Tribunal has rightly awarded an amount of Rs. 7,500/- under the head of actual loss of income. The claimant has not only bed ridden for three months, but had also to undergo an operation. Having regard to the facts of the case, the Tribunal was justified in awarding a sum of Rs.10,000/towards medical expenses, nutritious food etc and Rs 1,000/- towards attendants' charges. Similarly, the amount which is awarded to the claimant for pain, shock and suffering is in perfect consonance with the principles enumerated by the High Court from time to time and cannot be regarded as excessive. No exception can be taken to the amount of compensation awarded to the claimant under the head of pain, shock and sufferings or for the expenditure incurred by him for treatment as well as for actual loss of income.

11. On overall view of the matter, I am satisfied that no ground is made out by the appellant for interfering with the award passed by the Tribunal and therefore, the appeal is liable to be dismissed.

12. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is hereby dismissed with no orders as to costs.

13. The learned counsel for the appellant has stated at the bar that, in view of the provision of section 173

of the Motor Vehicle Act, the appellant has deposited Rs.25,000/- with the High Court at the time of instituting the appeal. The office is directed to remit the said amount to the Tribunal, before which the rest of the amount awarded has been deposited by the appellant, pursuant to directions given by the Court. The impugned order passed by the Tribunal regarding disbursement/investment of amount awarded is just and legal and therefore, it is hereby confirmed. After remittance of Rs.25,000/- by High Court office to the Tribunal, the Tribunal shall disburse/invest the amount awarded to the original claimant, as per the directions given by it in judgement and award dated November 30, 1994 rendered in Claim Case No.38/93.

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